

SECURING THE U.S. SOUTHERN LAND BORDER: ENHANCING THE INTERAGENCY EFFORT

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USAWC CLASS OF 2011

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| REPORT DOCUMENTATION PAGE | | | | Form Approved OMB No. 0704-0188 | |
|---|-----------------------------|---|---|--|---|
| Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing this collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. | | | | | |
| 1. REPORT DATE (DD-MM-YYYY) 07-03-2011 | | 2. REPORT TYPE Strategy Research Project | | 3. DATES COVERED (From - To) | |
| 4. TITLE AND SUBTITLE Securing the U.S. Southern Land Border: Enhancing the Interagency Effort | | | | 5a. CONTRACT NUMBER | |
| | | | | 5b. GRANT NUMBER | |
| | | | | 5c. PROGRAM ELEMENT NUMBER | |
| 6. AUTHOR(S) Mr. Michael D. Kennedy | | | | 5d. PROJECT NUMBER | |
| | | | | 5e. TASK NUMBER | |
| | | | | 5f. WORK UNIT NUMBER | |
| 7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Colonel Michael S. Chesney Department of Command, Leadership and Management | | | | 8. PERFORMING ORGANIZATION REPORT NUMBER | |
| 9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES) U.S. Army War College 122 Forbes Avenue Carlisle, PA 17013 | | | | 10. SPONSOR/MONITOR'S ACRONYM(S) | |
| | | | | 11. SPONSOR/MONITOR'S REPORT NUMBER(S) | |
| 12. DISTRIBUTION / AVAILABILITY STATEMENT Distribution A: Unlimited | | | | | |
| 13. SUPPLEMENTARY NOTES | | | | | |
| 14. ABSTRACT Currently the land border between the United States and Mexico is an area of increasing violence. Most of this violence is drug related and so far has occurred in Mexico. However, if left unchecked, this violence will likely move north, threatening the safety and security of the people of the United States living in the border region. A more focused interagency approach may be needed to prevent this from happening. How can the Government of the United States address this problem in an era of budget constraints? This paper will explore a strategy for a more comprehensive and coordinated use of current resources to deal with this emerging threat. | | | | | |
| 15. SUBJECT TERMS Border Security, Homeland Security | | | | | |
| 16. SECURITY CLASSIFICATION OF: | | | 17. LIMITATION OF ABSTRACT UNLIMITED | 18. NUMBER OF PAGES 34 | 19a. NAME OF RESPONSIBLE PERSON |
| a. REPORT UNCLASSIFIED | b. ABSTRACT UNCLASSIFIED | c. THIS PAGE UNCLASSIFIED | | | 19b. TELEPHONE NUMBER (include area code) |

USAWC STRATEGY RESEARCH PROJECT

SECURING THE U.S. SOUTHERN LAND BORDER: ENHANCING THE INTERAGENCY EFFORT

by

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ABSTRACT

AUTHOR: Special Agent Michael D. Kennedy

TITLE: Securing the U.S. Southern Land Border: Enhancing the Interagency Effort

FORMAT: Strategy Research Project

DATE: 7 March 2011 WORD COUNT: 6,477 PAGES: 34

KEY TERMS: Border Security, Homeland Security

CLASSIFICATION: Unclassified

Currently the land border between the United States and Mexico is an area of increasing violence. Most of this violence is drug related and so far has occurred in Mexico. However, if left unchecked, this violence will likely move north, threatening the safety and security of the people of the United States living in the border region. A more focused interagency approach may be needed to prevent this from happening. How can the Government of the United States address this problem in an era of budget constraints? This paper will explore a strategy for a more comprehensive and coordinated use of current resources to deal with this emerging threat.

SECURING THE U.S. SOUTHERN LAND BORDER: ENHANCING THE INTERAGENCY EFFORT

Historically the border between the United States (US) and Mexico has been a dangerous place. It is no different today. In the 1800's, bandits and criminals used Mexico as a safe haven from US law enforcement officers after committing crimes in the United States. This situation continued into the 20th century, highlighted by General John Pershing's "punitive expedition" into Mexico in pursuit of Pancho Villa in 1916.¹ The remainder of the 20th century was relatively calm with only sporadic outbreaks of cross-border violence. So far, the 21st century has seen a disturbing trend. The violence in Mexico just south of the US border has escalated dramatically over the past several years and now threatens to expand into the United States. Traditional US border control and law enforcement strategies may not be enough to prevent this violence from spreading north. A new interagency approach may be needed. This paper will explore strategies that could provide a greater unity of effort in the Federal government's approach to border security in order to counter this emerging threat. A basic understanding of the various Federal departments and agencies that have a role in border security is needed before these strategies can be analyzed.

The Department of Homeland Security

Prior to the tragedy of September 11, 2001, border security was divided primarily between four cabinet departments: the Department of Justice (Immigration and Naturalization Service), the Department of the Treasury (U.S. Customs Service), the Department of Agriculture (Animal and Plant Health Inspection Service), and the Department of Transportation (the U.S. Coast Guard).² The Homeland Security Act of

2002 (P.L. 107-296) consolidated most federal agencies that operate along the U.S. Borders into the Directorate of Border and Transportation Security (BTS) a subordinate element of the Department of Homeland Security (DHS).³ The exception was the U.S. Coast Guard which remained a separate organization under DHS. BTS consisted of three main agencies: (1) Customs and Border Protection (CBP), which was responsible for commercial operations, inspections, and land border patrol functions, (2) Immigration and Customs Enforcement (ICE), which was responsible for customs and immigration investigations, alien detention and removals, air/marine interdiction, and federal protective services, and (3) Transportation Security Administration (TSA), which was responsible for protecting the nation's air, land, and rail transportation systems from all forms of attack.⁴

In 2005, DHS Secretary Chertoff, with Congressional approval, eliminated the BTS Directorate as part of the DHS Second Stage Review, placing the main border control agencies (CBP, ICE, and TSA) directly under the Secretary and Deputy Secretary of DHS. The Federal Air Marshal Service (FAMS) was moved back to TSA from ICE (FAMS were placed under ICE for an interim period between 2003 and 2005) in addition, the Air and Marine Office was transferred to CBP from ICE.⁵ No reason was given for this change and it added three additional direct report agencies to the span of control of the Secretary of DHS. DHS currently has 25 entities that directly report to the Secretary/Deputy Secretary. This creates a span of control problem. DHS should analyze its current structure and consider some logical subdivisions such as Undersecretaries for operations, management, and technology. This structure would be

a hybrid between the original DHS organization and its current form (see organization charts below).

Each border security component of DHS has unique capabilities and specialties. They are also organized differently for their unique missions and have cultural differences which can lead to friction when they interact with each other. A look at each component's organization is needed to fully appreciate this point.

Department of Homeland Security Original Organization Chart, March 2003

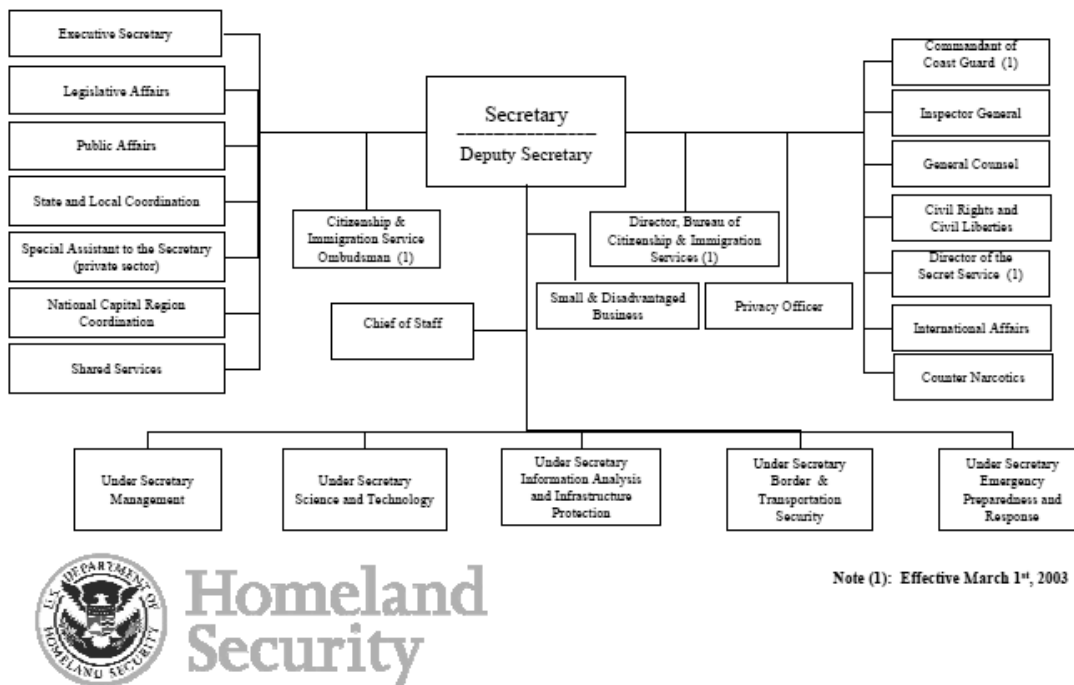
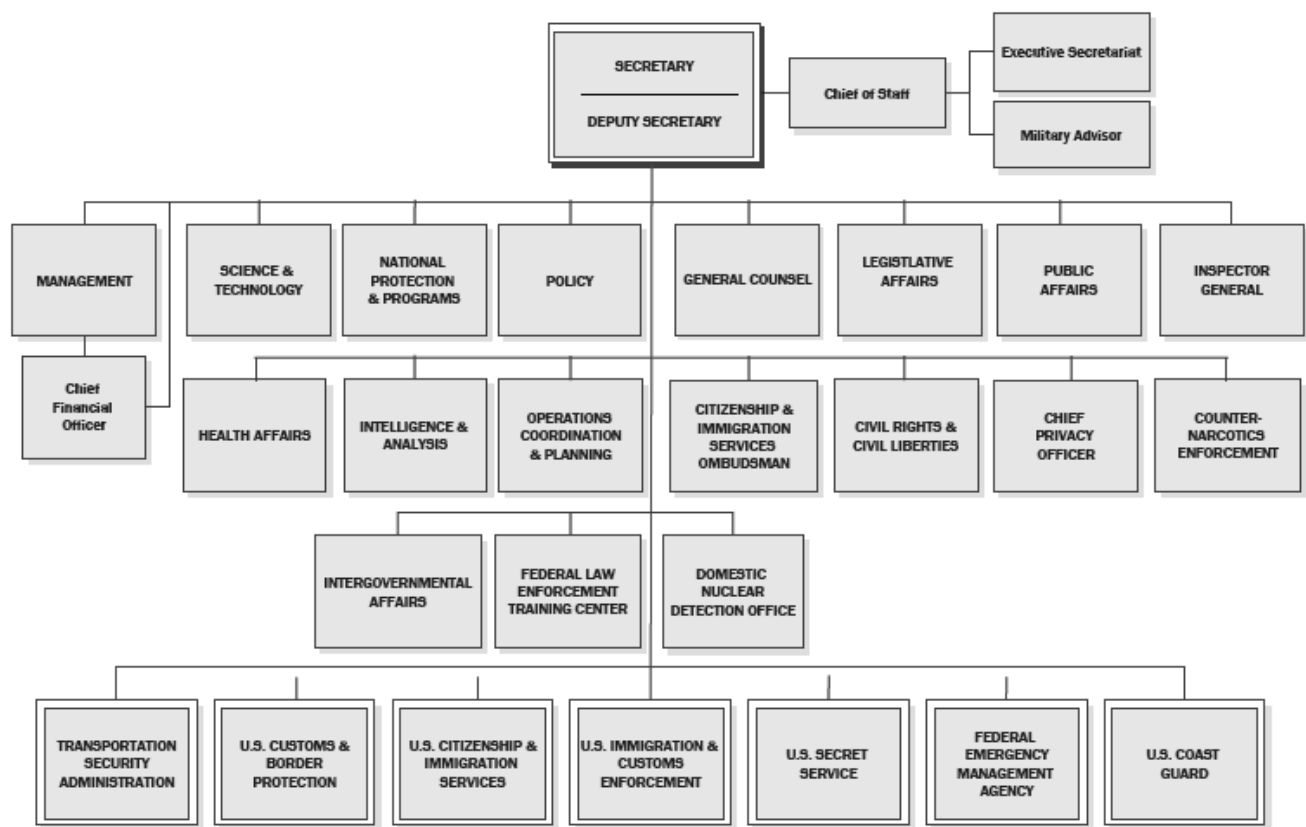


Figure 1. This chart depicts the original organization of DHS. CBP, ICE and TSA were components of the Under Secretary of Border and Transportation Security (BTS). Some of the operational components are not listed but are under BTS and some are listed separately on the right side of the chart (U.S. Coast Guard and U.S. Secret Service).



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Figure 2. This is the current organizational chart for DHS. Note the operational components are functionally aligned, but protecting the border requires a multifunction effort.

U.S. Customs and Border Protection (CBP)

CBP combined portions of several different border law enforcement agencies under one new agency. CBP is a large agency with over 58,000 personnel.⁸ CBP has three major border enforcement entities: Field Operations, Border Patrol, and Air/Marine Operations. Field Operations consists of the inspectors from the former Immigration and Naturalization Service (INS), U.S. Customs Service (USCS) and Department of Agriculture (USDA). Field Operations is responsible for conducting immigration,

customs, and agricultural inspections of persons and merchandise coming into the United States through official ports of entry (POEs).⁹ Primary inspectors are cross-trained and do the initial screening for violations of law. Secondary inspectors are more specialized and conduct more in depth inspections into possible violations of immigration, customs or agricultural law.¹⁰

CBP Organization Chart

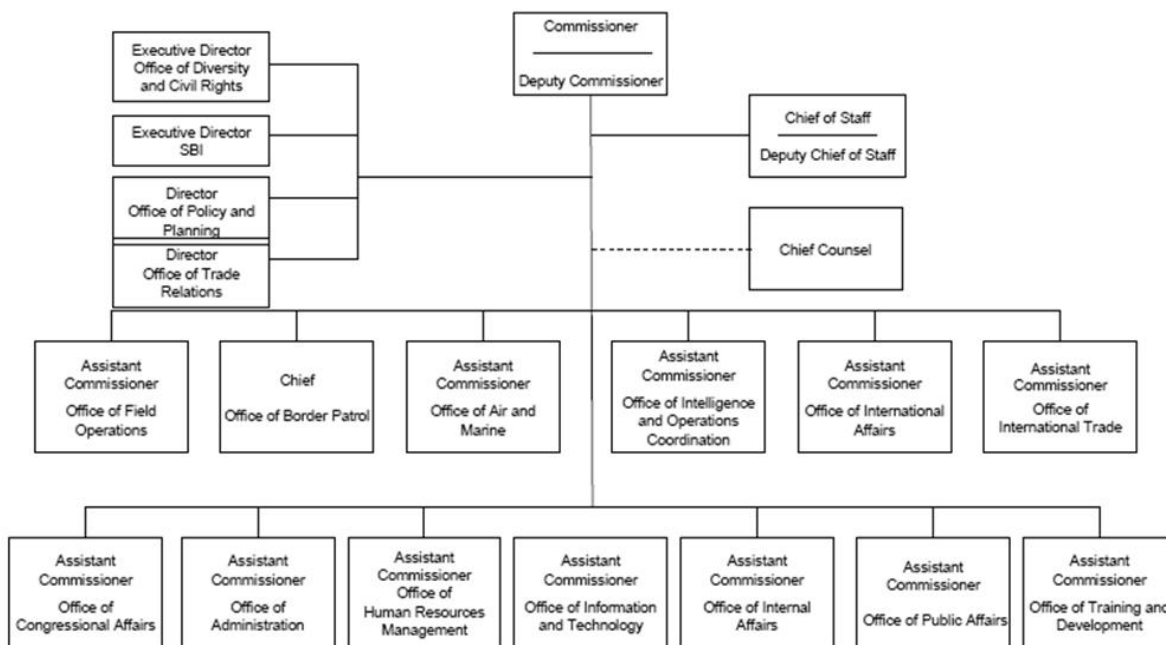


Figure 3. This is the current CBP Organizational Chart. Note Border Patrol Chief (traditional title) is equivalent to the other Assistant Commissioners.

The U.S. Border Patrol (USBP) is another component of CBP and enforces primarily immigration law between the ports of entry and transportation facilities with a nexus to the border (i.e. airports, bus, and train stations). Unlike field operations, USBP transferred from the Department of Justice mostly intact. In contrast to field operations, USBP kept their traditional green uniforms and paramilitary type structure. Subsequent to the merger, USBP agents have been cross-trained to detect and enforce customs violations in addition to their traditional alien apprehension role.

Air and Marine Operations (AMO) is the third border enforcement component of CBP. When DHS was initially created, AMO resided in ICE. The primary mission of AMO is interdiction and patrol oriented so it was transferred from ICE to CBP shortly after DHS was formed. In addition to its patrol and interdiction mission, AMO provides air support to ICE in the form of air surveillance, tracking, and transportation of tactical and response teams. Currently, CBP operates over 290 aircraft of 26 types and 251 vessels.¹²

U.S. Immigration and Customs Enforcement (ICE)

ICE is the largest and principal investigative arm for DHS with approximately 20,000 personnel. ICE's mission is to detect and prevent terrorist and criminal acts by targeting the people, money, and materials that support terrorist and criminal networks.¹³ ICE merged the investigative functions of the former INS and Customs Service, INS Detention and removal functions, some intelligence functions from both INS and USCS, and the General Services Administration's Federal Protective Service (FPS). ICE investigates customs and immigration violations along the border as well as in the interior of the U.S. ICE's mandate includes investigating national security threats

such as proliferation of weapons of mass destruction and potential terrorists, identifying criminal aliens for removal, investigating immigration-related document and benefit fraud, investigating work-site immigration violations, alien and contraband (including narcotics) smuggling, customs commercial fraud, and dual-use and munitions export violations.¹⁴

U.S. Coast Guard (USCG)

The Coast Guard was incorporated into DHS by the Homeland Security Act of 2002 as a standalone agency. The Coast Guard is the nation's principal maritime law enforcement authority and the lead federal agency for the maritime component of homeland security. Some of the law enforcement related missions of the Coast Guard include, evaluating, boarding and inspecting commercial ships approaching U.S. waters, countering terrorist threats in U.S. ports, protecting U.S. Navy and other high threat ships in U.S. Ports, and narcotics interdiction. The Coast Guard has almost 50,000 military and civilian personnel.¹⁵ The Coast Guard gains its authority from several U.S. statutes. Title 14, United States Code, Section 89 gives the Coast Guard its primary law enforcement powers. In addition, under Title 19, United States Code all commissioned and petty officers of the Coast Guard are also Customs Officers. This authority gives the Coast Guard the same border search authority as CBP and ICE.

Federal Air Marshal Service (FAMS)

After the attacks of September 11, 2001, the FAA had less than 100 FAMS and requested other federal agencies augment the program. Special agents from many U.S. law enforcement agencies were attached to the FAA until the newly formed Transportation Security Administration (TSA) was able to hire and train an adequate

force. In 2002, TSA was transferred from DOT to DHS and the current FAMS program was established. The FAMS are the primary in flight law enforcement arm of TSA. In addition to these flying duties, FAMS are used to assist other elements of TSA in their maritime and surface transportation security role as they are one of the few armed elements of TSA. Although not a border security agency per se, TSA's implementation of the Transportation Worker Identification Credential (TWIC) and its maritime and surface transportation security mission bring TSA into the border security arena.¹⁶

Other U.S. Government Entities

Even though DHS is the primary U.S. Government (USG) Department responsible for border security, many other USG agencies have important supporting roles. The Department of State (DOS) is responsible for the overseas issuance of visas to foreign visitors to the U.S. (ICE has visa security officers posted in embassies overseas to assist DOS consular officers in this function). The three Department of Justice (DOJ) law enforcement agencies (Federal Bureau of Investigation, Drug Enforcement Administration, Alcohol, Tobacco, Firearms and Explosives) all coordinate with CBP and ICE when their investigations involve the border area. Other entities include, the Department of Health and Human Services through the Food and Drug Administration (FDA) and Center for Disease Control (CDC), the FAA under the Department of Transportation, the Central Intelligence Agency (CIA) and various Department of Defense (DOD) activities. All of the above to include other state and local agencies make important contributions to border security.¹⁷ However, the largest federal contribution outside of DHS is from the U.S. Department of Defense.

Department of Defense (DOD)

DOD's primary player in border security is United States Northern Command (USNORTHCOM) which was established in 2002. "USNORTHCOM conducts homeland defense, civil support and security cooperation to defend and secure the United States and its interests."¹⁸ "In providing civil support, USNORTHCOM generally operates through established joint task forces (JTF)."¹⁹ The command provides a full range of domestic support when tasked by DOD but are restricted by the Posse Comitatus Act.²⁰

Joint Task Force-North (JTF-North) is the primary USNORTHCOM entity for law enforcement support. Originally established in 1989 as Joint Task Force Six (JTF-6) to support the "War on Drugs," it was renamed JTF North in 2004 and given an expanded mission. JTF North's mission is to support federal law enforcement agencies in the interdiction of suspected transnational threats along the approaches to the continental United States (CONUS). These threats involve international terrorism, narco-trafficking, alien smuggling, and weapons of mass destruction.²¹

Another DOD resource are the ten Defense Coordinating Officers (DCOs) assigned to each Federal Emergency Management Agency (FEMA) region. If requested and approved, the DCO serves as DOD's single point of contact at the Joint Field Office (JFO). With few exceptions, requests for Defense Support of Civil Authorities (DSCA) originating at the JFO are coordinated with and processed through the DCO. The DCO has a Defense Coordinating Element (DCE) consisting of a staff and military liaison officers to facilitate coordination and support to activated Emergency Support Functions (ESFs). Specific responsibilities of the DCO (subject to modification based on the situation) include processing requirements for military support, forwarding mission

assignments (MAs) to the appropriate military organizations through DOD-designated channels, and assigning military liaisons, as appropriate, to activated ESFs.²²

Using the military in a law enforcement support role is not a new concept. The Posse Comitatus Act (PCA) restricts the military from a direct law enforcement role unless expressly authorized by the Constitution or Congress. 10 U.S.C. Section 375 further directs the Secretary of Defense to promulgate regulations forbidding the direct participation of U.S. military members (minus Coast Guard) in a search, seizure, arrest or other similar activity during support activities to civilian law enforcement agencies.²³

The PCA does not apply if Congress specifically authorizes the use of the military to execute domestic law enforcement. In addition, the courts have not answered the Constitutional question of presidential authority in the cases of sudden emergency and protection of federal property. Congress has enacted several laws that authorize the military to conduct specific law enforcement support activities. In summary, reconnaissance and detection activities, loan of equipment, and movement of law enforcement personnel by U.S. the military have been specifically authorized by Congress. In addition, two broad exceptions to the tenants of the PCA have been granted by Congress. In accordance with Title 14, United States Code, the U.S. Coast Guard is granted specific law enforcement authorities while operating under DHS control. The National Guard is also able to have a more direct law enforcement role when they are operating under the authority of a State Governor under Title 32, United States Code.²⁴

The Challenge of Border Security

Border security presents unique and significant challenges for the United States. The National Strategy for Homeland Security states, “Our first and most solemn

obligation is to protect the American people.”²⁵ The next sentence advocates that this strategy be implemented to sustain “our way of life as a free, prosperous, and welcoming America.”²⁶ The hard balance is how to protect the Nation’s borders in a way that embraces individual freedom as well as being a welcoming nation to legal immigrants. We must also balance governmental authority which is grounded in our Constitutional framework. State, local and tribal governments provide the first response capability in law enforcement, fire, public health and emergency medical services.²⁷ The Federal government provides military, disaster response, and federal law enforcement capabilities to protect the Nation as a whole. Many of these capabilities overlap. The question “who is in charge?” is not always easy to answer based due to multiple jurisdictions of our three levels of government. The Federal government was criticized by state leaders for a slow disaster relief response to Hurricane Katrina when Federal law requires the state to request the assistance, which was slow in coming from the State of Louisiana. Contrast that with the Federal government’s criticism of Arizona’s immigration law, which is seen by the Federal government as a state’s encroachment into a Federal responsibility.²⁸

The current National Strategy for Homeland Security addresses three areas: (1) The prevention and disruption of terrorist attacks, (2) Protection of the American people, critical infrastructure and key resources, and (3) Respond to and recover from incidents.²⁹ This strategy does not specifically address trans-national crime, only terrorist acts. The current “drug war” in Mexico may change that. Several estimates put the drug related death toll in Mexico between 18,000 and 23,000 in the past four years.³⁰ In comparison, these figures greatly outnumber the total deaths in Afghanistan.

During the past three years, almost 7,000 Afghans (including soldiers, insurgents, and civilians) and approximately 550 coalition military were killed.³¹

So far, the violence has not spread significantly into the United States. In spite of political rhetoric, U.S. border cities such as El Paso, Nogales, Yuma, and Tucson have actually seen a decrease in violent crime over the past decade.³² The question that comes to mind, however, is what can the United States Government do to keep the drug violence in Mexico from spreading into the United States?

Agency Organization and Task Forces

One of the issues that affect the response options is the organization of U.S. border and law enforcement agencies and how they interact with one another. Within CBP there are 20 Field Operations Offices and 20 Border Patrol Sector Offices. Due to the differences in their missions, the areas of responsibility (AOR) of these offices do not coincide with one another even they are part of the same agency. To complicate this further, there are 26 ICE, Homeland Security Investigations (HSI) Field Offices whose special agents conduct investigations on their own and in support of CBP. The effect of this organizational structure is that in many areas, the senior field managers of three agencies of DHS have multiple counterparts in which to coordinate and de-conflict activities.

Within the Department of Justice, there are three agencies that have major roles in border security (FBI, DEA, and ATF). Their situation with AOR's is no better. The FBI has 56 Field Divisions, DEA has 21, and ATF has 25. As disjointed as this all appears, each agency is organized to best address their specific jurisdictional crime threat with the resources available.

The mechanism that has been used for many years to address multi-jurisdictional crime is task forces. The Federal government has two task force models that have been used to address large-scale drug related crime problems and one that addresses border crime. The oldest is the Organized Crime Drug Enforcement Task Force (OCDETF) that was established in 1982 "...to combine and leverage Federal law enforcement assets into a comprehensive attack against significant drug trafficking problems. OCDETF is comprised of special agents from Customs, DEA, FBI, INS, ATF, IRS, the Marshals Service, and the Coast Guard and implemented in nine regions throughout the United States...its innovative approach to solving the problems facing law enforcement serves as the model for cooperative investigative efforts."³³ OCDETF under the authority of the Attorney General was originally managed by the United States Attorneys. It is now managed by DEA and "...combines the resources and expertise of its member federal agencies which include: the Drug Enforcement Administration, the Federal Bureau of Investigation, the Bureau of Immigration and Customs Enforcement, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the U.S. Marshals Service, the Internal Revenue Service, and the U.S. Coast Guard – in cooperation with the Department of Justice Criminal Division, the Tax Division, and the 93 U.S. Attorney's Offices, as well as with state and local law enforcement."³⁴ "The principal mission of the OCDETF program is to identify, disrupt, and dismantle the most serious drug trafficking and money laundering organizations and those primarily responsible for the nation's drug supply."³⁵ OCDETF assisted the development of the Attorney General's Consolidated Priority Target (CPOT) List, which is a list of international drug traffickers and money launderers who exert large-scale "command and control" over major drug trafficking

organizations (DTOs) at the strategic level.³⁶ OCDETF “Strike Forces” have been extremely successful in dismantling major DTO’s and seizing millions of dollars in illicit assets and drugs over the last 28 years.

The High Intensity Drug Trafficking Task Force (HIDTA) program was authorized by the Anti-Drug Abuse Act of 1988 and the ONDCP Reauthorization Act of 1998. This legislation authorized the Office of National Drug Control Policy (ONDCP) to designate areas of the United States as HIDTA areas. The HIDTA program could then provide additional federal resources to those areas to eliminate or reduce drug trafficking. HIDTA as opposed to OCDETF is geographic in nature. The first five HIDTA areas were designated in 1990 (including the Southwest Border HIDTA that covers California, Arizona, New Mexico and Texas). Currently there are a total of 28 HIDTA’s. Each HIDTA has an Executive Board composed of an equal number of Federal and non-Federal law enforcement leaders. This design was created to ensure the needs of the state, local and tribal law enforcement agencies were addressed. The key priorities of the program are: assess regional drug threats; design strategies to focus efforts that combat drug trafficking; develop and fund initiatives to implement the strategies; facilitate coordination between federal, state, and local efforts; to improve the effectiveness and efficiency of drug control efforts to reduce or eliminate the harmful impact of drug trafficking.³⁷ HIDTA funds 670 initiatives throughout the United States. Most of these are local and regionally focused, to include five state Native American projects. There are three initiatives that provide support to other initiatives throughout the Nation. They are the Domestic Marijuana Eradication and Investigation Project, the

National Methamphetamine and Pharmaceuticals Initiative and the Domestic Highway Enforcement Program.³⁸

The most recent large-scale federal law enforcement task force is the Border Enforcement Security Task Force (BEST). Created in 2006, BEST task forces have expanded from a single task force to 12 of which eight are along the southwest border. Each of these 12 BEST task forces was formed to counter a variety of border threats along the U.S./Canada (Northern) and U.S./Mexico (Southern) border areas. The current situation along the border between the U.S. and Mexico was a large factor in the initial formation of BEST. These task forces are different than OCDETF or HIDTA which focus primarily on drug trafficking/smuggling. While BEST task forces also address drug crime, they are much broader in scope to address other criminal activity in the border region. For example, BEST task forces target inbound drugs, other contraband, and criminal immigrants from Mexico but also target weapons, ammunition, explosives and technology leaving the U.S. that assist the DTO's operating in Mexico. BEST task forces include the participation of CBP, U.S. Coast Guard, DHS Office of Intelligence and Analysis, DEA, FBI, ATF, multiple state, local and tribal agencies, as well as several Mexican agencies. The efforts of BEST task forces have resulted in the seizure of over 8,000 pounds cocaine, 173,000 pounds of marijuana, 1,000 weapons and explosives and \$25 million in U.S. currency.³⁹

Current Southwest Border Strategy

The current strategy for dealing with the myriad of issues along the Southwest Border is a combination of additional resources and the task force approach. DHS Secretary Napolitano outlined this strategy in recent Congressional testimony. She

stated that DHS will strengthen its "...efforts at the border through additional manpower, equipment, and technology; prevent the southbound flow of weapons and cash into Mexico; and increase support and collaboration with our Mexican counterparts."⁴⁰ She additionally stated that "...we are also deepening and expanding our engagement with federal partners such as the Departments of State, Justice and Defense, as well as state, local, and tribal governments and border communities..."⁴¹ I have already addressed OCDETF, HIDTA, and BEST task forces above. In addition to these task forces, CBP has developed and implemented Border Violence Protocols to better coordinate activities with local U.S. agencies as well as Mexican government officials. DHS has allocated \$59 million under Operation Stonegarden to enhance state, local, and tribal law enforcement activities along the border. This funding is used for additional law enforcement personnel, overtime expenses and deployment travel.⁴²

Secretary Napolitano also addressed the importance of international cooperation by stating, "The cornerstone of U.S. - Mexico security cooperation is the Mérida Initiative, led by U.S. State Department."⁴³ DHS uses Mérida as the basis for regional security partnerships with Mexican authorities. ICE's Border Liaison Officer (BLO) program provides streamlined information and intelligence sharing mechanism. The ICE Attaché office in Mexico City has established vetted Special Investigative Units of Mexican officers who work with ICE special agents in Mexico to investigate and prosecute border crimes. The ICE attaché office has also assigned native Spanish speaking special agents to small posts of duty at key border cities inside Mexico to better coordinate with Mexican law enforcement officials. Since 2005, CBP has also worked closely with Mexican officials on Operation Against Smugglers Initiative on

Safety and Security (OASISS), a bilateral alien smuggler prosecution program that enables both governments to share information in order to prosecute smugglers for crimes committed in the border region.⁴⁴

A large number of weapons linked to drug violence and recovered in Mexico are smuggled illegally from the U.S. into Mexico. Stopping this outbound flow of weapons is a DHS priority. ICE established Operation Armas Cruzadas, a partnership with the government of Mexico, to fight outbound arms smuggling. Operation Armas Cruzadas uses an intelligence-driven, systematic approach to arms smuggling investigations. ICE created a vetted Arms Trafficking Group of Mexican law enforcement officers to better share information and intelligence between the two countries. Operation Armas Cruzadas has resulted in 112 criminal arrests and seizure of over 116,000 rounds of ammunition, 1,417 weapons, and over \$3.3 million in monetary instruments.⁴⁵ In addition to Operation Armas Cruzadas, several other arms smuggling enforcement initiatives are ongoing. ICE and CBP have partnered with ATF in the eTrace initiative that aids Mexican officials in the forensic tracking of weapons used in drug cartel violence. CBP partners with DEA and HIDTA centers to increase the deployment of License Plate Readers, to gather intelligence on trafficking organizations. CBP, ICE, DEA, and ATF have joined forces to develop the Southwest Border Trafficking Initiative to identify and disrupt weapons and ammunition smuggling.⁴⁶

In addition to the inter-agency and task force efforts, CBP is now screening 100 percent of southbound traffic at the eight southwest border rail crossings. CBP is using existing non-intrusive inspection equipment to screen all outbound rail cars for anomalies that may indicate arms smuggling. Previously, this equipment was dedicated

to inbound inspections. Mobile x-ray equipment is also being directed against outbound traffic at ports of entry as well and inbound traffic. CBP is using Mobile Response Teams from Field Operations and Border Patrol agents to augment current staffs at ports of entry along the southwest border.⁴⁷

DHS is also combating the illegal movement of currency across the southwest border. Operation Firewall, led by ICE, is addressing the bulk cash smuggling threat. ICE and CBP have conducted numerous operations under Operation Firewall with their Mexican counterparts. ICE has recently established a Trade Transparency Unit with Mexico to identify cross-border trade anomalies, which often indicate some kind of trade-based money laundering. This is accomplished by the analysis of import and export data and financial information. ICE's efforts have led to more the \$50 million is cash in FY 2008.⁴⁸

This international cooperation and collaboration has resulted in significant success. According to ONDCP statistics, in Fiscal Years (FY) 2009 and 2010, CBP seized more than \$104 million in southbound illegal currency – an increase of more than \$28 million over FY 2007-2008. Also in FY 2009/2010, CBP and ICE seized more than \$282 million in illegal currency, more than 7 million pounds of illegal drugs and more than 6,800 weapons along the Southwest border. These seizures represent increases of more than \$73 million in currency, more than 1 million pounds in drugs, and more than 1,500 weapons over FY 2009/2010. The increase in seizures can be linked to an increase in cooperation and information sharing between U.S. Federal, state, local and tribal law enforcement agencies and Mexican law enforcement authorities.⁴⁹ The Mérida Initiative allocated \$700 million to enhance Mexican law enforcement and

judicial capacity in FY 2009. These funds will help improve the government of Mexico's efforts in crime prevention, rule of law, and law enforcement. Equipment such as five helicopters, a maritime patrol aircraft, and non-intrusive inspection technology will be purchased with these funds. Training and other support will also be provided to help Mexico implement its new legal system and establish an effective witness and victim protection program, crucial to successful prosecution of drug offenders.⁵⁰ These efforts are showing signs of success. "On November 18, 2010, Antonio Cardenas Guillen, the leader of Mexico's Gulf Drug Cartel was killed in a gun battle with Mexican marines."⁵¹ It is too early to tell what effect Guillen's death may have on inter-cartel violence.

Border Security Options

Even a brief study of international drug cartels, money laundering, narco-terrorism, and border violence in Mexico will reveal that border security is a wicked problem without a simple solution. I use the term wicked problem for two reasons, the first is a definition of a complex problem that has no definitive formulation, without a well-described set of potential solutions, with a set of interlocking issues and constraints that change over time, embedded in a dynamic social context.⁵² The second reason is the violence in Mexico, along the border with the U.S., is so extreme (as many as 23,000 deaths in the past four years) that it rivals that of the most violent terrorist organizations. Assassinations of government officials and journalists, running gun battles without concern for innocent civilians, bombings, torture and beheadings by the drug cartels are truly wicked from a more traditional definition of the word- evil.

Several U.S. administrations have struggled with border security issues and challenges. The strategy so far has been to allocate more resources and create more

programs and task forces. These efforts are portrayed as comprehensive in nature and do address many different facets of a complex problem. However, comprehensive does not necessarily equate to coordination. A more unified approach to border security should be considered. There have been several concepts proposed to provide more unity of effort in the Federal government's approach to border security.

One of the original options after 9/11 when DHS was formed was to bring together the FBI, DEA, ATF, and Customs under DHS. This would have brought most Federal law enforcement and investigative personnel under one Secretary. This option would have also separated the entities responsible for the investigation of Federal crimes from the prosecution function, which would remain under the Attorney General and DOJ. The Secretary of DHS would be able to re-structure the Department as needed to address border security as well as any other organized criminal or terrorist threat to the U.S. There were many functional advantages to this option. This option would have matched approximately 25,000 criminal investigators with a roughly equivalent number of uniformed law enforcement officers (Border Patrol and Customs Field Operations). This option would have also merged the air assets of CBP, DEA and FBI into a more capable interdiction and investigative support arm. This option would also have created strong unity of command and effort as the Secretary of DHS would have command and control over all of the enforcement and investigative agencies involved in border security.

Politics played a large role in why this option was not implemented. The Attorney General did not want to lose his investigative agencies (FBI and DEA). The FBI and DEA also have strong support in Congress. The primary Congressional authorizing

committees for DOJ are the powerful House and Senate Committees on the Judiciary. These committees provide advocacy as well as oversight for DOJ. Another issue with this option was the inherent mistrust of large, powerful government departments by the American people and the fear of the abuse of power.

There has been a move within DHS to subdivide and consolidate many of its functional agencies under a regional concept mimicking FEMA. Regional Commissioners would exercise command and control over a multi-functional sub-department. This organizational structure was used by INS and U.S. Customs Service for many years. In INS and Customs, the Regional Commissioner had Assistant Regional Commissioners (ARC) who managed regional functional elements. For example, Customs had ARC's for Inspections, import specialists, and investigations. The advantage of this system is that it gives the regional executives a robust capability to deal with regional problems. It also established a clear chain of command for unity of effort.

As positive as this system sounds in theory, it was not successful in the two historic instances that specifically relate to border security. The regional system employed by INS led to Congress eliminating it as an agency during the creation of DHS in the original Homeland Security Act. The U.S. Customs Service converted from a regional system to a functional system in the early 1990's with positive results. The basic problem that arose out of the INS and Customs regional systems was the unintended creation of regional fiefdoms. The INS and Customs Regional Commissioners became very powerful and each ran their regions differently. This was not totally negative as they had the flexibility to address regional problems quickly.

However, problems arose when it came to the allocation resources and consistent procedures nationally. The regional commissioners lobbied against each other and headquarters for personnel and financial resources. Strong regional commissioners had more than enough resources and resisted giving them up to weaker ones who struggled to get adequate resources to address their threats. Another problem that arose was an inconsistency in procedures. For example, each region had different procedures on how to conduct immigration and customs inspections. Personnel policies also differed. Employees were moved to different job series for either promotion or for disciplinary reasons. These employees were often not trained or qualified to perform in these new job series. These personnel practices led to a dilution of job skills and lack of professionalism.

A Unity of Effort Approach

“Homeland Security Presidential Directive-5 (HSPD-5), called for a single, comprehensive system to enhance the ability of the United States to manage domestic incidents.”⁵³ The National Response Framework established response structures based on the National Incident Management System (NIMS).⁵⁴ If one considers the border security situation along the southwest border as a “domestic incident,” albeit more long term than most events traditionally labeled as domestic incidents such as hurricanes, flooding, and earthquakes, then this approach makes sense. Three concepts of NIMS are the Incident Command System (ICS), Multiagency Coordination System (MACS), and Unified Command. ICS was developed by the Federal, state and local wild land fire agencies during the 1970s in order to have a common base of key principles. ICS normally consists of the functional areas of command, operations, planning, logistics,

and finance/administration and sometimes intelligence/investigations.⁵⁵ The MACS system is used to coordinate activities above the field level by numerous agencies and to prioritize resources. Some examples of the MACS concept are the DHS National Operations Center (NOC), the FBI Strategic Information and Operations Center (SIOC), the National Counterterrorism Center, and numerous intelligence fusion centers. Unified Command is a key element in multijurisdictional or multiagency incident management. Unified Command is a team effort that brings agencies with different authorities and functional responsibilities to jointly provide management direction through the use of a single Incident Action Plan. The effort is unified while each participating agency maintains its own statutory authority, responsibility, and accountability.⁵⁶ The result would closely resemble a coalition military organization, where each military is under its own national command authority while working together for a common purpose. Unified Command could be used to effectively manage consolidated task forces on the southwest border.

DHS and DOJ are the two primary departments that are responsible for border security and the enforcement of Federal criminal statutes. DOD is a vital part of the overall Federal effort as they provide critical support to the civilian law enforcement agencies under DHS and DOJ. The key concepts of NIMS could be brought into a new strategy that consolidates the numerous border task forces (OCDETF, HIDTA, and BEST) under two regional Border Interagency Operations Centers (BIOC). These centers would be located in the existing DOJ led El Paso Intelligence Center (EPIC)⁵⁷ in El Paso, Texas and the DHS led Intelligence and Operations Coordination Center (IOCC) in Tucson, Arizona. The Tucson BIOC would consist of California and Arizona

and the El Paso BIOC would consist of New Mexico and Texas. The El Paso BIOC would continue to be led by a DOJ senior executive with a DHS deputy and the Tucson BIOC would be led by a DHS senior executive with a DOJ deputy. Both BIOC's would have "joint staffs" consisting of personnel from all of the Federal agencies involved as well as state, local, and tribal officers. U.S. Northern Command (NORTHCOM), through Joint Task Force-North (JTF-N) would continue to coordinate DOD support to both BIOC's.

Border Interagency Operations Center-Tucson/El Paso

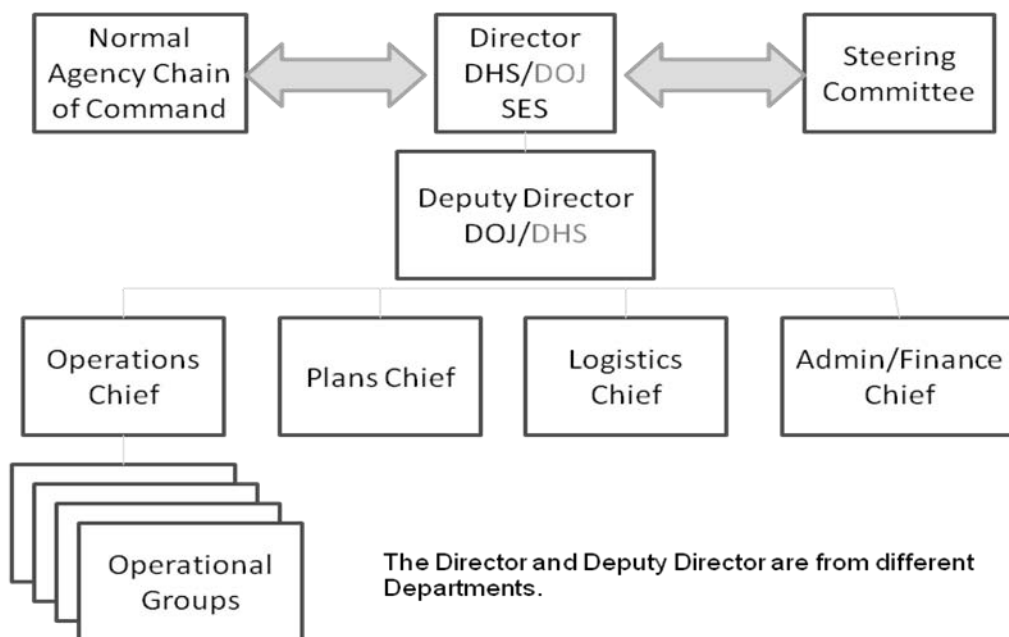


Figure 4. Notional chart of the Border Interagency Operations Centers (BIOC's) based on the ICS model. El Paso is in gray to denote director's position from DOJ.

The advantage of this strategy is that it does not alter the existing structure of any department or agency of the Federal government. It does leverage the strengths of

the various Federal, state, local, and tribal law enforcement agencies into a coordinated and united effort using existing principles. The geographic areas are broad enough to contain significant resources and limited enough to be able to focus these resources. This strategy would require minimal additional financial resources as the appropriated funds to HIDTA, OCDETF, and BEST would continue to be used. Congress would need to be consulted to implement this change as the appropriations committees would need to approve some of the changes in structure. A disadvantage of any new strategy is that it creates a period of disruption and possible paralyzes as new procedures are put into place. However, it consolidates significant resources and reduces the duplication of effort that currently exists.

This strategy has many advantages but it would face some significant hurdles. The current HIDTA, OCDETF and BEST task forces would be transitioned to the new BIOC structure. They by default become the bill payers. This includes much more than just funding. HIDTA's have staff paid normally through a state or local agency. OCDETF is based more on reimbursement but there are OCDETF paid positions in some Federal agencies and in some U.S. Attorney's offices (USAO). There will be resistance to these personnel changes as well as legislative remedies that would need to be completed to ensure the funding streams from appropriated funds as well as from the Federal forfeiture funds are not interrupted. OCDETF and HIDTA are long-standing Federal programs with political advocates. The benefits of converting the southwest OCDETF and HIDTA's to BIOC's would need to be explained in a clear and convincing manner to the stakeholders. These stakeholders include CBP, ICE, FBI, DEA, USAO, state, local and tribal law enforcement agencies as well as several Congressional committees. A

key point to Congress and the Federal agencies is that the HIDTA and OCDETF programs themselves are not being eliminated as OCDETF and HIDTA task forces in other geographical areas would not be affected by the creation of the BIOC's.

There are other actions that can take place to ensure the BIOC's are successful. A steering committee could be formed with representatives from the various U.S. Attorneys, state, local and tribal law enforcement executives in each BIOC area. These steering committees would give the BIOC's strategic guidance and be a forum to resolve issues. The concept of some kind of steering or oversight committee is common to HIDTA and other current task forces. There should also be an international provision to allow input by vetted Mexican law enforcement authorities into the overall strategy. The ultimate success or failure of any current or new strategy is largely based on the buy-in and support of the stakeholders.

On February 7, 2011, CBP announced the creation of the Arizona Joint Field Command (JFC). The JFC is described as "an organizational realignment to integrate CBP's border security, commercial enforcement, and trade facilitation missions to more effectively meet the unique challenges faced in the Arizona area of operations."⁵⁸ A Chief Patrol Officer was appointed as the commander of the Arizona JFC. The JFC consists of U.S. Border Patrol's Tucson and Yuma Sectors, the Office of Field Operation's Tucson Field Office, and the Office of Air and Marine's Yuma and Tucson Air Branches.⁵⁹ This new structure may be an indication of DHS' intent to move to a more joint operating environment. Arizona has been the test bed for other imaginative efforts to counter border threats. The original BEST and the Southwest Border Initiative both began as pilot programs in Arizona. Even though the Arizona JFC currently only

affects CBP, other agencies have to wonder if this will be the path that DHS will take as a model. One striking element of the announcement was that the JFC was not characterized as a pilot or temporary organization.

The BIOC strategy could be very successful in providing a unity of effort in the Federal government's response to the violence along the border between the United States and Mexico. It will need broad support and commitment by not only the Federal agencies involved but state, local, tribal and Mexican law enforcement agencies. A peaceful, secure border promotes legal immigration, trade and other economic efforts and is in the best interests of citizens of the United States and Mexico.

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